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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,149	03/19/2002	Mitsuyohsi Takizawa	81833.0032	9566

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/980,149	Applicant(s) TAKIZAWA ET AL.	
	Examiner Eisa B Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1 and 2 are pending in this application.

DETAILED ACTION

1 The references cited in the Search Report PCT have been considered, but will not be listed on any patent resulting from this application because they were not provided on a separate list in compliance with 37 CFR 1.98(a)(1). In order to have the references printed on such resulting patent, a separate listing, preferably on a PTO-1449 form, must be filed within the set period for reply to this Office action.

Claim Rejections - 35 USC § 102

2 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

3 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4 Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in alternative, under 103(a) as obvious over Imamura et al. (EP 0 547 790 A1).

Imamura et al. (EP' 790 A1) teaches a method for dyeing hair comprising applying to the hair an acidic hair dyeing composition comprising benzyl alcohol as aromatic alcohol which identical to the aromatic alcohols of the claimed formula (I), when in the claimed formula (I), R1

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is hydrogen atom, X is a straight-chain having one carbon (CH₂), n and m each represents an integer of 0, acid black 1 and acid violet 43 as acid dyes and water (see page 7, table 1). The composition has a pH in the range of 2.0 to 4.5, which is the same range as claimed in claim 2 (see page 5, lines 40-41). Imamura et al. (EP' 790 A1) also teaches that the hair is shampooed before the application of the dyeing composition which inherently intended to imply that the acidic dyeing composition is applied to the wet hair after shampooing and rinsing the hair with water at a temperature which would fall within the claimed temperature range as claimed in claim 1 (see page 8, line 4). Imamura et al. (EP' 790) teaches all the limitations of the instant claims and, hence the claims are anticipated by Imamura et al. (EP' 790).

However, the claims in the alternative, under 35 U.S.C. 103(a) are obvious over Imamura et al. (EP' 790), because the reference teaches a method for dyeing hair comprising applying to the hair an acidic dyeing composition comprising benzyl alcohol, acidic dyes and water (see page 7, Table 1) and wherein the process comprises a step of shampooing the hair before applying the dyeing composition as claimed in claims 1 and 2 (see page 8, line 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such a process of dyeing hair by wetting the hair with water at a temperature of 10 to 40°C with a reasonable expectation of success because the reference teaches clearly that the hair is subjected to a shampooing process before dyeing which implies that water is used for rinsing the shampoo from hair and wherein the water temperature would normally fall within the claimed temperature range, since it is customary to use tap water at this claimed temperature range in such a process and, thus, a person of the ordinary skill in the art would expect such a process to have similar properties to those claimed, absent unexpected results.

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5 Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in alternative, under 103(a) as obvious over Yoshihara et al. (US 5,332,581).

Yoshihara et al. (US' 581) teaches a method for dyeing hair comprising applying to the hair an acidic hair dyeing composition comprising aromatic alcohol benzyl alcohol of a formula (b), which identical to the aromatic alcohols of the claimed formula (I) (see col. 1, formula (2)), acidic dyes (see col. 3, lines 55-68) and water (see col. 7, table 1). The composition has a pH of 3.6, which falls within the claimed range (see col. 7, Table 1). Yoshihara et al. (US' 581) also teaches that the hair is shampooed before the application of the dyeing composition which inherently intended to imply that the acidic dyeing composition is applied to the wet hair after shampooing and rinsing the hair with water at a temperature which would fall within the claimed temperature range as claimed in claim 1 (see col. 6, line 19). Yoshihara et al. (US' 581) teaches all the limitations of the instant claims and, hence the claims are anticipated by Yoshihara et al. (US' 581).

However, the claims in the alternative, under 35 U.S.C. 103(a) are obvious over Yoshihara et al. (US' 581), because the reference teaches a method for dyeing hair comprising applying to the hair an acidic dyeing composition comprising benzyl alcohol, acidic dyes and water (see col. 7, Table 1) and wherein the process comprises a step of shampooing the hair before applying the dyeing composition as claimed in claims 1 and 2 (see col. 6, line 19). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such a process of dyeing hair by wetting the hair with water at a temperature of 10 to 40°C with a reasonable expectation of success because the reference teaches clearly that the hair is subjected to a shampooing process before dyeing which implies

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that water is used for rinsing the shampoo from hair and wherein the water temperature would normally fall within the claimed temperature range, since it is customary to use tap water at this claimed temperature range in such a process and, thus, a person of the ordinary skill in the art would expect such a process to have similar properties to those claimed, absent unexpected results.

6 Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in alternative, under 103(a) as obvious over Kim et al. (US 5,356,438).

Kim et al. (US' 438) teaches a method for dyeing hair comprising applying to the hair an acidic hair dyeing composition comprising aromatic alcohol of benzyl alcohol (see col. 5, line 62), which identical to the aromatic alcohols of the claimed formula (I), when in the claimed formula (I), R1 is hydrogen atom, X is a straight-chain having one carbon (CH₂), n and m each represents an integer of 0, acidic dyes (see col. 4, lines 18-32) and water (see col. 4, line 48). The composition has a pH of about 3.0, which falls within the claimed range as claimed in claim 2 (see col. 5, lines 66-68). Kim et al. (US' 438) also teaches that the dyeing composition can be applied to the wet hair after shampooing the hair (see col. 6, lines 10-12), which inherently intended to imply that the acidic dyeing composition is applied to the wet hair after shampooing and rinsing the hair with water at a temperature which would fall within the claimed temperature range as claimed in claim 1 (see col. 6, lines 11-12). Kim et al. (US' 438) teaches all the limitations of the instant claims and, hence the claims are anticipated by Kim et al. (US' 438).

However, the claims in the alternative, under 35 U.S.C. 103(a) are obvious over Kim et al. (US' 438), because the reference teaches a method for dyeing hair comprising applying to the hair an acidic dyeing composition having a pH in the range of 3 to 5 which is overlapped with

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the claimed ranges as claimed in claim 2 (see col.5, lines 66-68), wherein the composition comprises benzyl alcohol (see col. 5, line 62) acidic dyes (see col. 4, lines 18-32) and water (see col. 4, line 48) and wherein the process comprises a step of shampooing the hair before applying the dyeing composition as claimed in claims 1 and 2 (see col. 6, lines 11 to 12). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such a process of dyeing hair by wetting the hair with water at a temperature of 10 to 40°C with a reasonable expectation of success because the reference teaches clearly that the hair is subjected to a shampooing process before dyeing which implies that water is used for rinsing the shampoo from hair and wherein the water temperature would normally fall within the claimed temperature range, since it is customary to use tap water at this claimed temperature range in such a process and, thus, a person of the ordinary skill in the art would expect such a process to have similar properties to those claimed, absent unexpected results.

7 Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in alternative, under 103(a) as obvious over Abercrombie et al. (US 5,845,653).

Abercrombie et al. (US' 653) teaches a method for dyeing hair comprising applying to the hair an acidic hair dyeing composition comprising acidic dyes (see col.6, lines 22-23). Abercrombie et al. (US' 653) also teaches that the method involves wetting the hair which has been identified for coloring (see col. 8, lines 57-59), which inherently intended to imply that the acidic dyeing composition is applied to the hair after wetting the hair with water at a temperature which would fall within the claimed temperature range as claimed in claim 1. Kim et al. (US' 438) teaches all the limitations of the instant claim and, hence the claim is anticipated by Abercrombie et al. (US' 653).

However, the claim in the alternative, under 35 U.S.C. 103(a) is obvious over Abercrombie et al. (US' 653), because the reference teaches a method for dyeing hair comprising applying to the hair an acidic dyeing composition (see col. 6, lines 22-23) and wherein the process comprises a step of wetting the hair before applying the dyeing composition as claimed in claim 1 (see col. 8, lines 57 to 59). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such a process of dyeing hair by wetting the hair with water at a temperature of 10 to 40°C with a reasonable expectation of success because the reference teaches clearly that the hair is subjected to a wetting process before dyeing which implies that water is used for wetting the hair and wherein the water temperature would normally fall within the claimed temperature range, since it is customary to use tap water at this claimed temperature range in such a process and, thus, a person of the ordinary skill in the art would expect such a process to have similar properties to those claimed, absent unexpected results.

8 Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in alternative, under 103(a) as obvious over Hefford et al. (US 4,943,430).

Hefford et al. (US' 430) teaches a method for dyeing hair comprising applying to the hair an acidic hair dyeing composition comprising acidic dyes of Acid Black 1 and Acid Black 2 (see col. 3, lines 60-64). Hefford et al. (US' 430) also teaches that the method comprises applying the aqueous dyeing composition to wet hair (see col. 8, lines 17-18), which inherently intended to imply that the acidic dyeing composition is applied to the hair after wetting the hair with water at a temperature which would fall within the claimed temperature range as claimed in claim 1.

Hefford et al. (US' 430) teaches all the limitations of the instant claim and, hence the claim is anticipated by Hefford et al. (US' 430).

However, the claim in the alternative, under 35 U.S.C. 103(a) is obvious over Hefford et al. (US' 430), because the reference teaches a method for dyeing hair comprising applying to the hair an acidic dyeing composition (see col. 3, lines 60-64) and wherein the method comprises a step of wetting the hair before applying the dyeing composition as claimed in claim 1 (see col. 8, lines 17 to 18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such a process of dyeing hair by wetting the hair with water at a temperature of 10 to 40°C with a reasonable expectation of success because the reference teaches clearly that the hair is subjected to a wetting process before dyeing which implies that water is used for wetting the hair and wherein the water temperature would normally fall within the claimed temperature range, since it is customary to use tap water at this claimed temperature range in such a process and, thus, a person of the ordinary skill in the art would expect such a process to have similar properties to those claimed, absent unexpected results.

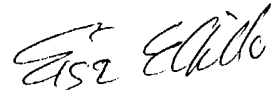
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Patent Examiner
Art Unit 1751

April 22, 2004